

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

OMEGA CHEMICAL PRP GROUP LLC)
and OMEGA CHEMICAL PRP GROUP,)

Plaintiffs,)

v.)

AARON THOMAS CO., INC. et al.,)

Defendants.)

Civ. No. 2:04-CV-01340-TJH-JWJ

SETTLEMENT AGREEMENT AND CONSENT ORDER

This Settlement Agreement and Consent Order (the “Agreement”) is made, as of the Effective Date of this Agreement, as defined in Paragraph 3 below, between Omega Chemical PRP Group LLC and Omega Chemical PRP Group (jointly, “Plaintiffs”) and Defendant United States of America (“United States”), collectively referred to as “the Parties,” as defined herein.

WHEREAS, Plaintiffs have commenced an action titled *Omega Chemical PRP Group LLC et al. v. Aaron Thomas Company, Inc.* and bearing Civil Action Number 2:04-CV-01340-TJH-JWJ in the United States District Court for the Central District of California (“the Action”);

WHEREAS, the Action involves claims by Plaintiffs under the Comprehensive Environmental Response, Compensation, and Liability Act of

1980, 42 U.S.C. §§ 9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (hereinafter "CERCLA"), together with other claims, seeking to recover certain costs they have allegedly incurred in response to the release or threatened release of hazardous substances at the Omega Chemical Corporation Superfund Site (the "Site"), and seeking a declaration as to the various Defendants' liability for costs to be incurred in the future;

WHEREAS, the Parties desire to enter into this Agreement to have a full and final resolution of any and all claims that have been or could hereafter be asserted against the United States in connection with the Site and to avoid the complication and expense of further litigation of such claims concerning the Site;

WHEREAS, the Parties agree that the payment of the sum of \$1,728,269.23 from the United States to the Plaintiffs as called for under this Agreement, represents payment of the United States fair and equitable share of liability for waste sent to the Site by the United States;

WHEREAS, the Parties agree that this Agreement is fair, reasonable and in the public interest; and

WHEREAS, the United States enters into this Agreement as a final settlement of all claims against the United States in connection with the Site and

does not admit any liability arising from occurrences or transactions pertaining to the Site,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Parties to this Agreement are Plaintiffs and the United States.
2. This Agreement applies to, is binding upon, and inures to the benefit of Plaintiffs (and its successors, assigns, and designees) and the United States.
3. Effective Date. The effective date of this Agreement shall be the date this Agreement is approved by the Court.
4. The Site. The "Site" means the Omega Chemical Corporation Superfund Site in Whittier, California.
5. Covered Matters. "Covered Matters" means any and all past or future claims that have been or could hereafter be asserted by Plaintiffs against the United States arising out of or in connection with the waste sent by the United States to the Site. Such claims include, but are not limited to, contamination at the Site, including any claims for off-site soil and groundwater contamination that may be emanating from the Site.
6. United States. "United States" means the United States of America, including all of its departments, agencies, and instrumentalities. The United States specifically includes, but is not limited to, the Department of Defense; the

Department of the Army; the Department of the Navy; the Department of the Air Force; the United States Coast Guard; the Defense Logistics Agency; the United States Department of Agriculture; the USDA Forest Service; the United States Department of Veterans Affairs; the United States Department of Energy (including Lawrence Livermore National Laboratory); the United States Department of Justice; the United States Bureau of Prisons; Federal Prison Industries, Inc. (t/a Unicor); and the National Aeronautics and Space Administration, including the contractor operating the Jet Propulsion Laboratory, a federally funded research and development center and national laboratory.

7. Release and Covenant Not to Sue by Plaintiffs. Upon approval and entry of this Agreement by the Court and payment of the settlement funds by the United States, Plaintiffs hereby forever release, discharge, and covenant and agree not to assert (by way of the commencement of an action, the joinder of the United States in an existing action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it may have had, or hereafter have, including, but not limited to, claims under CERCLA sections 107 and 113, against the United States with respect to Covered Matters except as otherwise provided herein.

8. Excluded Matters. The following Claims and Liabilities are Excluded Matters that are not subject to the release and covenant not to sue provisions (the United States reserves all of its rights with respect to the Excluded Matters):

a. Claims and Liabilities for natural resource damage pursuant to CERCLA Section 107(f) or any equivalent State law;

b. Claims and Liabilities by any person for death, personal injury or disease, loss of future or past wages or income, loss of consortium, property damage, diminution in value, or economic loss, whether based on negligence, strict liability, abnormally dangerous activity, statute or other law, including but not limited to assault, battery, nuisance, trespass, negligence, strict liability, products liability and infliction of emotional distress and/or fear;

c. Claims and Liabilities arising under or with regard to California's Safe Drinking Water and Toxic Enforcement Act of 1986, popularly known as "Proposition 65," California's Unfair Business Practices Act pursuant to Cal. Bus. Code Section 17200, and any rules, regulations, orders or notices promulgated or issued thereunder;

d. Claims and Liabilities arising from future events or occurrences caused directly by the United States that create a release or threat of a release of hazardous substances, expressly excluding from the foregoing, events and

occurrences caused by or to the extent contributed to by Plaintiffs or the United States during the course of or as a result of the work to be performed hereunder; and

e. Obligations, liabilities or duties imposed by this Agreement or actions to enforce or for breach of this Agreement.

f. Nothing in this Agreement shall be deemed to negate, diminish or otherwise impact any rights or claims that the United States Environmental Protection Agency may have against any party to this Agreement. In addition, nothing in this Agreement shall be deemed to negate, diminish or otherwise impact any rights that the Plaintiffs may have with respect to the United States Environmental Protection Agency, including, but not limited to the right to assert any defenses, objections, off-sets, claims, causes of action, demands, or the like, whether statutory, equitable, common law, known, unknown, accrued or unaccrued.

9. Protection Against Claims.

a. The Parties acknowledge and agree that the payment to be made by the United States pursuant to this Agreement represents a good faith compromise of disputed claims and that the compromise represents a fair, reasonable, and equitable discharge for the Covered Matters addressed in this Agreement. With regard to any claims for costs, damages or other claims against

the United States for Covered Matters, the Parties agree that the United States is entitled to, as of the effective date of this Agreement, contribution protection pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, whether by statute or common law, extinguishing the United States' liability to persons not party to this Agreement. Any rights the United States may have to obtain contribution or otherwise recover costs or damages from persons not party to this Agreement are preserved.

b. The Parties agree to join in and/or support, as may be appropriate, such legal proceedings as necessary to secure the Court's approval and entry of this Agreement and to secure and maintain the contribution protection contemplated in this Agreement.

c. Should any third party bring an action against the United States for Covered Matters, the Parties agree to cooperate in asserting the aforementioned contribution protection set forth in Section 9(a) as a complete defense to such action. Should a court find the aforementioned protection does not apply to bar the claims against the United States, then Plaintiffs agree that they will assume responsibility for any soil and/or groundwater contamination attributed to the waste sent to the Site by the United States; excluding only assumption of responsibility for those matters identified as Excluded Matters in Paragraph 8 of

this Agreement. By agreeing to assume responsibility for any soil and/or groundwater contamination attributed to the waste sent to the Site by the United States, Plaintiffs agree that such waste shall be attributed to Plaintiffs, and Plaintiffs shall be liable for any payments or work obligations associated with such waste.

10. Payment.

a. Within 120 days after the effective date of this Agreement, the United States will pay \$1,728,269.23 to Plaintiffs. Payment shall be made by Electronic Funds Transfer in accordance with instructions provided by Plaintiffs. The aforesaid payment represents the United States' fair and equitable share of liability for waste sent to the Omega Site by the United States.

b. If such payment is not made in full within one hundred and twenty (120) days after the Effective Date of this Agreement, then interest on the unpaid balance shall be paid commencing on the 121st day after the Effective Date. Interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the United States Code.

c. Said payment by the United States is subject to the availability of funds appropriated for such purpose. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States

obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

11. Covenant Not to Sue by United States and Reservation. The United States hereby releases and covenants not to sue Plaintiffs for Covered Matters, except the United States specifically reserves its right to assert against Plaintiffs any claims or actions regarding the Site brought on behalf of the United States Environmental Protection Agency or a natural resource trustee.

12. Entire Understanding of the Parties. This Agreement constitutes the entire understanding of the Parties with respect to its subject matter. No claimed additions to or modifications or amendments of this Agreement, or any claimed waiver of any of its terms or conditions, shall be effective unless in writing and signed by the Parties.

13. Effect of Settlement/Entry of Judgment.

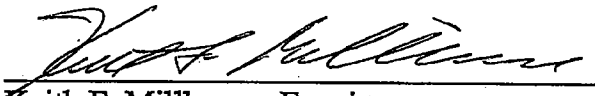
a. This Agreement was negotiated and executed by Plaintiffs and the United States in good faith and at arms length and is a fair and equitable compromise of claims, which were vigorously contested. This Agreement shall not constitute or be construed as an admission of liability by the United States. Nor is it an admission or denial of any factual allegations set out in the Complaint or an admission of violation of any law, rule, regulation, or policy by any of the Parties to this Agreement.

b. Upon approval and entry of this Agreement by the Court, this Agreement shall constitute a final judgment among the Parties.

14. Representative Authority. The individuals signing this Agreement on behalf of the Parties hereby certify that they are authorized to bind their respective party to this Agreement.

For the PLAINTIFFS:


Date: 4-18-2006


Keith F. Millhouse, Esquire
Millhouse Law Group
2815 Townsgate Road, Suite 330
Westlake Village, California 91361
(805) 230-2280

For the UNITED STATES:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment & Natural Resources Division

Date: April 18, 2006


Paul Cirino, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-1542

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AARON THOMAS CO., INC. et al.,)

Defendants.)

ORDER

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds that the foregoing Agreement is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. The foregoing Agreement is hereby APPROVED.

The United States is entitled to contribution protection for Covered Matters, as defined in the foregoing Agreement, pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, whether by statute or common law.

All claims against the United States in this action, whether alleged in the complaint or as a cross-claim or third-party claim, or otherwise, are hereby dismissed with prejudice.

There being no just reason for delay, this Court expressly directs, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, ENTRY OF FINAL JUDGMENT in accordance with the terms of this Agreement, SIGNED and ENTERED this _____ day of _____, ____.

Plaintiffs and the United States shall each bear their own costs and expenses, including attorneys' fees, in this case.

Dated: _____

Hon. Terry J. Hatter, Jr.
UNITED STATES DISTRICT JUDGE